

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.No. 1196/Mds/2011
(निर्धारणवर्ष / Assessment Year: 2007-08)

The Income Tax Officer, Business Ward X(2), Chennai.	Vs	Smt. Jayanthi Balaji, No.388, Kalyani Illam, Tiruvottiyur High Road, Chennai – 600 019.
		PAN: ACAPJ2172J
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 1198/Mds/2011
(निर्धारणवर्ष / Assessment Year: 2007-08)

The ACIT, Business Circle X, Chennai.	Vs	Shri J. Balaji, No.388, Kalyani Illam, Tiruvottiyur High Road, Chennai – 600 019.
		PAN: AEZPB8489H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

CO No. 119/Mds/2011
(in ITA No.1198/Mds/2011)

Shri J. Balaji, No.388, Kalyani Illam, Tiruvottiyur High Road, Chennai – 600 019.	Vs	The ACIT, Business Circle X, Chennai.
PAN: AEZPB8489H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 1602/Mds/2012
(निर्धारणवर्ष / Assessment Year: 2007-08)

The ACIT, Company Circle I(2), Chennai.	Vs	Shri J. Srinivasan, No.2, Thandavarayan Street, Sowcarpet, Chennai – 600 079.
		PAN: ANWPS0522J
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

CO No. 68/Mds/2014
 (in ITA No.1602/Mds/2012)

Shri J. Srinivasan, No.2, Thandavarayan Street, Sowcarpet, Chennai – 600 079.	Vs	The ACIT, Company Circle I(2), Chennai.
PAN: ANWPS0522J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 3467/Mds/2016
 (निर्धारणवर्ष / Assessment Year: 2007-08)

Shri J. Srinivasan, No.2, Thandavarayan Street, Sowcarpet, Chennai – 600 079.	Vs	The ACIT, Company Circle I(2), Chennai.
PAN: ANWPS0522J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 1720/Mds/2012
 (निर्धारणवर्ष / Assessment Year: 2007-08)

The ACIT, Circle-I, Thanjavur	Vs	Shri N. Murughasan (Late), By Legal Heir M. Rajasekar, No.12, Perumal West Street, Nagapattinam - 611 001.
		PAN: AAKPM3571G
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

CO No. 31/Mds/2015
 (in ITA No.1720/Mds/2012)

Shri N. Murughasan (Late), By Legal Heir M. Rajasekar, No.12, Perumal West Street, Nagapattinam - 611 001.	Vs	The ACIT, Circle-I, Thanjavur
PAN: AAKPM3571G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 3468/Mds/2016
 (निर्धारणवर्ष / Assessment Year: 2007-08)

Shri N. Murughasan (Late), By Legal Heir M. Rajasekar, No.12, Perumal West Street, Nagapattinam - 611 001.	Vs	The ACIT, Circle-I, Thanjavur
PAN: AAKPM3571G		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No.1377/Mds/2012

(निर्धारणवर्ष / Assessment Year: 2007-08)

The ACIT, Circle-IX, Chennai.	Vs	Smt. J. Shanthi (Late), By Legal Heir Shri J. Balaji, 30, Balaji Nagar, IInd Street, Royapettah, Chennai -14.
		PAN: AAVPS4993D
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 1378/Mds/2012

(निर्धारणवर्ष / Assessment Year: 2007-08)

The ACIT, Circle-IX, Chennai.	Vs	Shri P. Venkatesan, 30, Balaji Nagar, IInd Street, Royapettah, Chennai -14.
		PAN: ACAPV3015C
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 699/Mds/2013

(निर्धारणवर्ष / Assessment Year: 2009-10)

The Income Tax Officer, Ward-IX (3), Chennai.	Vs	Shri P. Venkatesan, 30, Balaji Nagar, IInd Street, Royapettah, Chennai -14.
		PAN: ACAPV3015C
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 1379/Mds/2012

(निर्धारणवर्ष / Assessment Year: 2007-08)

The ACIT, Circle-IX, Chennai.	Vs	Smt. S. Anuradha, 19,Balaji Nagar, IInd Street, Royapettah, Chennai -14.
		PAN: AFDPA3611H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./I.T.A.No. 1380/Mds/2012

(निर्धारणवर्ष / Assessment Year: 2007-08)

The ACIT, Circle-IX, Chennai.	Vs	Shri S. Srinivasan, 30,Balaji Nagar, IInd Street, Royapettah, Chennai -14.
		PAN: ALBPS9987J
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by	:	Shri M.N. Mauriya, CIT
निर्धारिती की ओर से /Assessee by	:	Shri B. Ramakrishnan, FCA

सुनवाईकीतारीख/Date of hearing	:	22.08.2017
घोषणाकीतारीख /Date of Pronouncement	:	13.11.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

The Revenue has filed the following appeals against the respective orders of the Ld.CIT(A) as detailed herein below:-

Assessee Name	ITA Appeal No.	CIT(A) Order details			
		Order passed by	Order No.	Date	Passed under Section
Assessment year 2007-08					
Jayanthi Balaji	1196/Mds/2011	CIT(A)-IV, Chennai	104/10- 11/A.IV	30.03.2011	250 (6) r.w.s. 143(3) &147 of the Act
J. Balaji	1198/Mds/2011	CIT(A)-IV, Chennai	103/10- 11/A.IV	30.03.2011	250 (6) r.w.s. 143(3) &147 of the Act
J. Srinivasan	1602/Mds/2012	CIT(A)-III, Chennai	660/11-12/A- III	15.05.2012	250 (6) r.w.s. 143(3) &147 of the Act
N. Murughasan (Late)	1720/Mds/2012	CIT(A), Trichy	290/2011-12	28.06.2012	250(6) r.w.s. 143(3) of the Act
J. Shanthi (Late)	1377/Mds/2012	CIT(A)-IX, Chennai	109/10-11	26.03.2012	250 (6) r.w.s. 143(3) &147 of the Act
P. Venkatesan	1378/Mds/2012	CIT(A)-IX, Chennai	111/10-11	26.03.2012	250 (6) r.w.s. 143(3) &147 of the Act
S. Anuradha	1379/Mds/2012	CIT(A)-IX, Chennai	115/10-11	26.03.2012	250 (6) r.w.s. 143(3) &147 of the Act
S. Srinivasan	1380/Mds/2012	CIT(A)-IX, Chennai	113/10-11	26.03.2012	250 (6) r.w.s. 143(3) &147 of the Act
Assessment year 2009-10					
P. Venkatesan	699/Mds/2013	CIT(A)-IX, Chennai	242/11-12	28.12.2012	250 (6) r.w.s. 143(3) of the Act

2. The assessee has also filed the following cross objections and appeals against the respective orders of the Ld.CIT(A) for the assessment year 2007-08 as detailed herein below:-

<i>Assessee Name</i>	<i>Appeal No. CO / ITA</i>	<i>CIT(A) Order details</i>			
		<i>Order passed by</i>	<i>Order No.</i>	<i>Date</i>	<i>Passed under Section</i>
<i>J. Balaji</i>	<i>CO 119/Mds/2011</i>	<i>CIT(A)-IV, Chennai</i>	<i>103/10-11/A.IV</i>	<i>30.03.2011</i>	<i>250 (6) r.w.s. 143(3) &147 of the Act</i>
<i>J. Srinivasan</i>	<i>CO 68/Mds/2014 ITA 3467/Mds/2016</i>	<i>CIT(A)-III, Chennai</i>	<i>660/11-12/A-III</i>	<i>15.05.2012</i>	<i>250 (6) r.w.s. 143(3) &147 of the Act</i>
<i>N. Murughasan (Late)</i>	<i>CO 31/Mds/2015 ITA 3468/Mds/2016</i>	<i>CIT(A), Trichy</i>	<i>290/2011-12</i>	<i>28.06.2012</i>	<i>250 (6) r.w.s. 143(3) of the Act</i>

3. Since the issues and grounds in all the appeals of the Revenue / assessees and cross objections of the assessees are identical/similar/common, they are heard and disposed off by this consolidated order for the sake of convenience.

4. **Revenue's Appeal**

ITA No.1196 of 2011, AY 2007-08 - Smt. Jayanthi Balaji:

This appeal is filed by the Revenue aggrieved by the order of the Ld.CIT(A)-IV in 104/10-11/A.IV dated 30.03.2011 passed U/s.250(6) r.w.s.147 & 143(3) of the Act.

4.2 The Revenue has raised several grounds in its appeal, however the crux of the issue is that the Revenue is aggrieved by the order of the Ld.CIT(A) who has treated the land sold by the assessee as agriculture land which do not fall in the classification of asset defined in Section 2(14)(iii)(a) or (b) of the Act as against the order of the Ld.AO who had held that the land sold by the assessee is non-agriculture land and therefore the gain arising from the sale of the land to be liable for tax under the head 'capital gain'.

4.3 The brief facts of the case are that the assessee is an individual filed her return of income for the assessment year 2007-08 on 24.03.2008 admitting total income of Rs.6,80,839/-, which includes agricultural income of Rs.1,95,000/-. Initially the assessment was processed U/s.143(1) of the Act on 17.03.2009 and thereafter the case of the assessee was reopened by issuance of notice U/s.148 of the Act, based on the information received from ITO(OSD), Company Range-I(2), Chennai vide letter dated 31.12.2009, stating that the assessee has not disclosed the sale of the land amounting to Rs.12,25,00,000/- and

the additional compensation received amounting to Rs.3,15,00,000/- in the return of income filed by the assessee for the relevant assessment year 2007-08.

4.4 During the course of scrutiny proceedings it was revealed from the documents produced by the assessee that the assessee had purchased land measuring 5 acres at Thazhambur Village from Smt. Samtyuktha Paramahamsan vide sale deed dated 18.05.2005 for a sale consideration of Rs.66 lakhs and also vide consent letter dated 20.05.2005, the assessee had accepted to continue with the joint venture farming agreement executed earlier between the vendor Smt. Samtyuktha Paramahamsan and M/s. Bhavani Distilleries & Chemicals Limited (M/s. BDCL) dated 11.06.2004.

4.5 It was further observed that at the time of the sale of land, the assessee had entered into a tripartite agreement with M/s. BDCL and M/s. Carmen Builders (a unit of DLF) wherein M/s. BDCL agreed to forego the farming rights held by it against a consideration of Rs.5,25,00,000/- to be received from M/s.

Carmen Builders out of which 60% was paid to the assessee amounting to Rs.3,15,00,000/-.

4.6 The Ld.AO queried the assessee, as to why the sale proceeds of the 5 acres land sold for Rs.12.25 crores should not be treated as sale of 'capital asset' U/s.2(14) of the IT Act. In response, the Ld.AR of the assessee had produced the following details to establish that the land sold by her is agricultural land and therefore does not fall within the ambit of 'capital asset' U/s. 2(14) of the Act.

- a) *Copy of the web extract of pattas, chita/adangal, Kist receipts etc.*
- b) *Distance of the land from Municipal limits and population certificate issued by the concerned authorities.*
- c) *Evidence for lands situated outside the CMDA limits.*
- d) *Income-tax Return for the past years where the assessee had admitted income from agriculture.*
- e) *Copy of joint venture farming agreement entered into with M/s. BDCL for cultivation*
- f) *Copy of sworn statement made by two of Village Administrative Officers before the income-tax Officer, Company Ward – I(2).*
- g) *Copy of appeal order No.ITA/667/2009-10/A-III dated 31.03.2010.*

- h) Latest Photograph showing evidence of cultivation in and around the subject land.*
- i) Opinion from Shri S Rajaratinam, retired Honorable ITAT member.*
- j) Case law of MS Srinivasa Naicker vs. Income Tax Officer, 2007 292 ITR 482 Mds.*

The Ld.AR further made the following submission before the Ld.AO to justify the stand of the assessee:-

1. The land sold by the assessee was subject to agricultural operations till the date of sale.
2. The land was not situated within the notified area declared by the Central Government.
3. Joint Venture Agreement between the parties establishes the fact that the land was under cultivation.
4. The assessee is an agriculturists carrying on agricultural operation for number of years and continue to do so till date.
5. The IT return filed by the assessee during the past few years reveals that the assessee was earning agricultural income.
6. The documentary evidence with respect to Revenue records also establishes the fact that the land sold by the assessee was under cultivation.

7. Reliance was also placed in the case of M/s. BDCL wherein the Ld.CIT(A) in ITA No./667/09-10/A-III had held that the land in question was agriculture land and agricultural operations were carried out in the land.

After hearing the Ld.AR and further deliberation, the Ld.AO rejected the submission made by him due to the following reasons:

- i. On inspection it was found that the land comes under the Tiruporur Union Panchayat which is only 3½kms away from Sholinganallur Town Panchayat.
- ii. Though the photographs revealed that agricultural operations were being carried out in and around the land, the purchaser of the land had built very huge multistoried flats in the land.
- iii. Therefore it was evident that the intention of the buyer was to deploy the land for non-agriculture purposes.
- iv. The land was situated within 2 kms from old Mahabalipuram Road, a software hub and the area had lost its agricultural characteristics long back.

- v. Though the sale deed mentioned that the land sold by the assessee was agricultural land, it does not carry any significance because generally the Sub-Registrar refers to the characteristics of land from the previous documents.
- vi. The sale consideration of the land is abnormally high and no prudent agriculturists will pay such huge price to purchase land for agriculture purpose.
- vii. The developments in the locality subsequent to the sale of the land show that large scale constructions have taken place.
- viii. Subsequent to the purchase of the land, agricultural operations have been seized to take place.
- ix. Even during the period of long gap, when the conversion of the land to non-agricultural land took place, agricultural operations seized to exist.
- x. Since the business of the assessee was not purchase and sale of land, the gain on sale of land has to be necessarily assessed under the head 'capital gains'.

4.7 Thereafter the Ld.AO rejected the decision of the Hon'ble Madras High Court in the case of Srinivasa Naickar vs. ITO

reported in 482 ITR, cited by the AR as not applicable in the case of the assessee and relied on the decision of the Hon'ble Apex Court in the case Sarifabibi Md. Ibrahim reported in 204 ITR 631 and assessed the gain arising out of the sale of the land under the head 'short term capital gain' amounting to Rs.14,74,00,000/- in the hands of the assessee.

4.8 While doing so, the Ld.AO accepted the contention of the assessee that the additional sale consideration received from M/s. BDCL amounting to 40% of the compensation received by it, which works out to Rs.3,15,00,000/- is taxable in her hands.

4.9 On appeal, the Ld.CIT(A) after hearing both the parties, examining the issue in detail and verifying the patta passbook, kist receipt, tripartite agreements, IT return of the earlier years, distance/population certificate, certificate from VAO that Thazhampur is not within Sholinganallur Town Panchayat, JVFA with M/s. BDCL, copy of DLF agreement showing that the approval for construction was sanctioned in November 2008, etc., held that the land sold by the assessee is agriculture land as per

the provisions of Section 2(14)(iii) of the Act by observing as under:-

- (i) The chitta, patta and adangal reveals the fact that agricultural operations were carried out in the land during the earlier years & up to the date of sale.
- (ii) The assessee had also disclosed her agricultural income and expenditure in her return of income, which cannot be decried without valid reason.
- (iii) On verifying it was revealed that the land is situated at a distance beyond 8 Kms from the city limit.
- (iv) As per the certificate issued by the VAO, it was evident that the distance of Thazhampur village from the nearest municipality i.e., Chennai Corporation is 18.3 Kms.
- (v) Because of the afore stated reasons, it is evident that the land in question is agricultural land as provided U/s.2(14)(iii) of the Act.
- (vi) The fact in the case Sarifabibi Md. Ibrahim supra decided by the Hon'ble Supreme court is not identical to the case of the assessee due to the following reasons and therefore not applicable:-

The facts in the case of Sarifabibi Md. Ibrahim are as follows:-

- a) The land sold was non-agriculture land at the time of sale.
- b) The land sold was @Rs.23 per sq.yard.
- c) The land was within 1 km from Surai Railway Station.
- d) Application for conversion of land to non-agricultural purposes was made before the sale.
- e) The construction activity started immediately after the sale.

However, in the case of the assessee the facts are as follows:

- a) The land sold by the appellant was measured in acres.
- b) At the time of sale, the land was agricultural land.
- c) Agricultural activities were carried out in the land for several years consistently up to the date of sale.
- d) All the documentary evidences and Revenue records establishes the above fact.

- e) The appellant had not made any request for re-classification of the land before the sale.
- f) All the commercial activities with respect to the land was carried out by the purchaser of the land subsequent to the sale including request for reclassification of the land.
- g) The land was situated beyond 18 kms from the Chennai Corporation Limit.
- h) None of the provisions of Section 2(14)(iii) of the Act brings the land of the assessee within the ambit of "capital asset".

For the above stated reasons, the ratio laid out in the case Sarifabibi Md. Ibrahim supra is not applicable in the case of the assessee.

- (vii) Further reliance was placed in the decision of the Hon'ble Supreme Court in the case CIT vs. All India Tea & Trading Co. Ltd. reported in 219 ITR 544, wherein it was held that the determining factor with regard to sale of land is the characteristic of the land at the time of sale.
- (viii) The Ld.AO had relied on the fact that the land is situated at a distance of 3½ kms from Sholinganallur which is a

Town Panchayat, however Sholinganallur is neither a municipality nor a cantonment or a notified area.

- (ix) Reliance was placed in the decision of the Hon'ble Jurisdictional Madras High Court in the case CIT vs. PJ Thomas reported in 211 ITR 897, wherein it was held that Panchayats are excluded from the list of locality enumerated in the Section.
- (x) The certificate issued by the VAO certifies that the distance of Thazhampur village from the nearby Municipality i.e., Chennai Corporation is 18.3 Kms. Therefore the property does not fall in the classification of 'capital asset' defined in Section 2(14)(iii)(a) or (b) of the Act.
- (xi) Reliance was also placed in the decision of the Hon'ble Jurisdictional Madras High Court in the case M.S Srinivasa Naickar vs. ITO reported in 292 ITR 482, wherein after considering various other decisions including the decision of the Hon'ble Apex court in the case Sarifabibi Md. Ibrahim supra, it was held that the characteristic of the land as on the date of sale of land should only be taken into consideration while

determining whether the land sold falls within the ambit of “capital asset” as per Section 2(14)(iii) of the Act.

4.10 Before us the Ld.DR vehemently argued in support of the order of the Ld.AO by reiterating the discussions made therein and further relied on the decision of the case Sarifabibi Md. Ibrahim & others reported in 204 ITR 631 and pleaded for reinstating the order of the Ld.AO. The Ld.AR on the other hand submitted a paper-book consisting of the factual details of the case and all the relevant agreements and another paper-book consisting of twenty four decisions of various Judicial Authorities including that of the Hon’ble Apex Court in support of his contention that the land sold by the assessee is agricultural land. He further argued in support of the order of the Ld.CIT(A) and requested for sustaining his order.

5.1 We have heard the rival submissions and carefully perused the materials available on record. From the orders of both the Revenue Authorities and the documents produced before us, the following undisputable facts are revealed:-

- (i) From page No.28 of the PB, it is evident that the land in Survey No.182, Patta No.984 of Thazhampur Village is classified as 'agriculture land'.
- (ii) From page No.30 of PB, it is evident that the assessee has paid land revenue tax with respect to the agriculture land in patta No.984.
- (iii) For the assessment year 2006-07, the assessee has filed income tax return wherein she has disclosed agricultural income of Rs.1,55,500/- as found in page No.39 to 41 of the PB. The Ld.CIT(A) has also accepted the same.
- (iv) On page No. 33 of the PB, the certificate of the VAO of Thazhampur village is enclosed, wherein it is stated that Thazhampur village is situated beyond 19 Kms from Tambaram Municipal limit and the population of Thazhampur village is 2950.
- (v) Thus the finding of the Ld.CIT(A) that the land in question is agricultural land which is situated outside the limit prescribed under Section 2(14)(iii)(a) or (b) of the Act, is unchallengeable.
- (vi) Page 10 of the PB reveals that the land sold by the assessee is agriculture land because the sale deed

executed for the sale of land dated 14.06.2006 mentions it so and the same is accepted by the Sub-Registrar, Thiruporur.

- (vii) The commercial tripartite agreement executed between the assessee and the other parties also reveals that the land sold by the assessee is agriculture land.
- (viii) The Ld.CIT(A) has verified the chitta, patta and adangal which states that the land is agricultural land and there is no reason to doubt the same.
- (ix) It is also apparent that the land sold is measured by acres and not in sq.ft., which establishes the fact that the land is not a commercial land.

5.2 Moreover, the finding of the Ld.AO for treating the land sold by the assessee as non-agricultural land does not have any merit because of the following reason:-

- (i) The main grievance of the Ld.AO was that the purchaser of the land had built a huge multistoried flat. However the decision of the Hon'ble Jurisdictional High Court in the case M.S Srinivasa Naicker vs. ITO supra, it has been held that

‘when the assessee had used the land for agricultural operations till the date of sale, it has to be treated as agricultural land and not a capital asset irrespective of the fact that the purchaser intend to put the land to a totally different use.’

- (ii) The finding of the Ld.AO that abnormal sale consideration was received by the assessee therefore the nature of land sold by the assessee cannot be classified as agricultural land also does not have any merit. This Bench of the Tribunal in ITA No.2067/Mds/2015 for the assessment year 2012-13 in the case M/s. A.V. Thomas Leather & Allied Products Pvt. Ltd. vs. DCIT vide order dated 05.02.2016 relying on the revenue records held that the land has to be treated as agricultural land though it was sold for exorbitant price.
- (iii) The finding of the Ld.AO that the land is situated in Tiruporur Union Panchayat which is only 3½ Kms away from Sholinganallur Town Panchayat also do not have any merit because the Hon'ble Jurisdictional Madras High Court in the case CIT vs. P.J. Thomas reported in 211 ITR 897 as categorically held that ‘the exclusion in S.2(14)(iii) of the Act,

does not apply to agricultural land situated within Panchayat limits and where such land is agriculture land, capital gain tax is not attracted’.

- (iv) The finding of the Ld.AO that the land is situated in developed / developing area and therefore has lost the characteristic of agricultural land, also does not have any merit because in the case ITO vs. Mrs. Chitra Rajendran reported in 81 taxmann.com 155, this Bench of the Tribunal has held otherwise.

5.3 Considering the facts and circumstance of the case, we find merit in the order of the Ld.CIT(A) who has elaborately discussed the issue at length and based on the documentary evidence and various decisions of the higher Judiciary has held that the land sold by the assessee is agricultural land and therefore capital gain tax will not be attracted. Further the reason stated by the Ld.AO for arriving at a contrary conclusion does not have any merit as discussed herein above. Hence, we do not find it necessary to interfere with the order of the Ld.CIT(A) who has treated the land sold by the assessee as agricultural land falling outside the area specified U/s.2(14)(iii) (a)&(b) of the Act and the

gain arising out of the same will not attract 'capital gain' tax. However, we also make it clear that the additional compensation received by the assessee (other than what is retained by the Power of Attorney holder) for cancelling the tripartite agreement with M/s. BDCL and M/s. Carmen Builders to forego the farming right of M/s. BDCL has to be necessarily brought to tax under the head 'capital gains' because it arises out of extinguishment of a commercial right which is an intangible asset and not attributable towards sale of agricultural land. Needless to mention that the compensation retained by the Power of Attorney holder will be assessed to tax in his hands under the head 'income from other source' because it does not relate to any particular head of income. It is ordered accordingly.

6. With respect to the other Revenue's appeals mentioned herein above, we find that the issues relating to the sale of the respective agricultural land are all either situated in the same locality adjacent to each other or in the locality of similar nature having the same characteristics of land. The details of all the agricultural land sold by the assessees are extracted in the chart herein below for reference:-

Revenue Appeal No, Assessee & Sale Deed	Land details	Area of land	Sale Consideration In Crores. (Rs.)	Compensation in Crores (Rs.)	In Paper Book (Page Nos.)					
					Classification of land in Revenue Records as Agriculture Land	Revenue Tax Receipt	VAO Certificate beyond 18 Kms from Corporation limit, population 2950	Patta	Adan gal Wet land	IT return for AY 2006-07 disclosing Agricultural Income (AI)
1198 of 2011 AY 2007-08 J. Balaji	Thaiyur Village Various Survey Nos.	9 Acres	27.00	Nil	26-35	-	-	37 - 40	45- 48	58 & 59 Rs.90,000/-
	S.No.178, Thazhampur Village, Chengalpattu Taluk, Kancheepuram District	1 Acre	3.00	Nil	36	-	53-54	-	-	
1602 of 2012 AY 2007-08 J. Srinivasan	Thaiyur Village Various Survey Nos.	-		Nil	-	-	-	2-4	8-11	82 to 84 Rs.60,000/-
	S. No.174 31, Thazhambur Village, Chengalpattu Taluk, Kancheepuram District	2 Acres	12.00		25	28	77 & 78	26	-	
1720 of 2012 AY 2007-08 N. Murughasan (Late) Sale Deed 8846 & 8847 of 2016 Dt. 05.10.2006	S.No.179/1 & 179/2 31, Thazhambur Village, Chengalpattu Taluk, Kancheepuram District	5 Acres & 5 Acres	11.50 & 11.50	7.2	25	26	28 & 29	-	-	-

Appeal No, Assessee & Sale Deed	Land details	Area of land	Sale Consider ation In Rs.	Compe nsation	In Paper Book					
					Classifi cation of land in Revenu e Record s	Rev enu e Tax Rec eipt	VAO Certificate	Patta	Adan gal	IT return for AY 2006-07 disclosing Agricultural Income (AI)
1377 of 2012 AY 2007-08 J. Shanthi (Late) Sale Deed 5240 of 2006 Dt. 14.06.2006	S.No.181/1, 182/2A, 183/2A 31, Thazhambur Village, Chengalpattu Taluk, Kancheepuram District S.No.1351/3 & 1351/5 Thaiyur 'B' Village, Chengalpattu Taluk, Kancheepuram Dist.	4.65 Acres , 3 Acres & 3.46 Acres 0.80 Acres , 1.20 Acres	27.2 (approx.) 6.00	7.00 (approx)	31 & 32 45 & 46	35 49	37 & 38 -	33 47	- -	53 & 54 Rs.1,00,000/-
1378 of 2012 AY 2007-08 P. Venkatesan Sale Deed dt. 13.06.2006 699 of 2013 AY 2009-10	182/3, 165/21 31, Thazhambur Village, Chengalpattu Taluk, Kancheepuram District S.No. 171/2A 31, Thazhambur Village, Chengalpattu Taluk, Kancheepuram District	1.82 Acres 4 Acres 1.69 Acres	4.46 (approx.) 12.00 2.80 (approx.)	1.15 (approx.) Nil	16	42 19	44 & 45 21 & 22	11 & 40 15	- 17	-
1379 of 2012 AY 2007-08 S. Anuradha Sale Deed 5241 of 2006 dt. 14.06.2006	S.No.182/2 31, Thazhambur Village, Chengalpattu Taluk, Kancheepuram District	6 Acres	14.70	3.78	28	31	32 & 33	29	-	38 & 39 Rs.60,000/-
1380 of 2012 AY 2007-08 S. Srinivasan Sale Deed dt. 13.06.2006	S.No.138 Thazhambur Village, Chengalpattu Taluk, Kancheepuram District	1 Acre	3.00	Nil	7	-	10 & 11	8	-	15 & 16 Rs.50,000/-

6.1 Since the Revenue has not raised any doubt on the authenticity of the documents produced before us and the issue in the above mentioned appeals being identical to the appeal decided by us in ITA No.1196 of 2011 in the case of Smt. Jayanthi Balaji, herein above, the same decision holds good in all these appeals also. Therefore we do not find it necessary to interfere with the order of the Ld.CIT(A) who has held that the land sold by the assessee is agricultural land falling outside the area specified U/s.2(14)(iii) (a)&(b) of the Act and the gain arising out of the same will not attract 'capital gain' tax. However, we also make it clear that the additional compensation received by the assessee (other than what is retained by the Power of Attorney holder) for cancelling the tripartite agreement with M/s. BDCL and M/s. Carmen Builders to forego the farming right of M/s. BDCL has to be necessarily brought to tax under the head 'capital gains' because it arises out of extinguishment of a commercial right which is an intangible asset and not attributable towards sale of agricultural land. Needless to mention that the compensation retained by the Power of Attorney holder will be assessed to tax in his hands under the head 'income from other source' because it

does not relate to any particular head of income. It is ordered accordingly.

7. The Revenue has raised one more ground in the following appeals:

- a) ITA No.1377 of 2012, Smt. J. Shanthi (Late), AY 2007-08
- b) ITA No. 1378 of 2012, Shri P. Venkatesan, AY 2007-08
- c) ITA No. 699 of 2013, Shri P. Venkatesan, AY 2009-10
- d) ITA No.1379 of 2012, Smt. S. Anuradha, AY 2007-08
- e) ITA No.1380 of 2012, Shri S. Srinivasan, AY 2007-08

7.1 The Revenue is aggrieved by the order of the Ld.CIT(A) for treating Rs.35,000/-, Rs.90,000/-, Rs.96,000/-, Rs.1,78,000/- & Rs.50,000/- respectively as the assessee's agricultural income claimed in the return of income as against non-agricultural income held by the Ld.AO.

7.2 In the above appeals, the Ld.AO had treated the agriculture income disclosed by the assesseees in their respective return of income as non-agriculture because the assessee did not produced any evidence such as sales bill etc., to prove the sale of the agriculture produce. However on appeal, the Ld. CIT(A) directed the Ld.AO to treat those income as agricultural income of the assessee because the assessee's had extensive agriculture

land. We do not find any infirmity in the order of the Ld.CIT(A), because we have also upheld the view of the Ld.CIT(A) that the assessee's were in possession of extensive agricultural land and the Revenue records also establishes the same. Moreover the agricultural income declared by the assessee is also nominal. Therefore we hereby sustain the order of the Ld.CIT(A) in this issue with respect to all the above mentioned assessees. It is ordered accordingly

8. Assessee's Cross Objections:

8.1 CO No.119 of 2011 of Shri J. Balaji, AY 2007-08:

In the CO, the assessee has raised the ground that the Ld.CIT(A) has erred in sustaining the addition made by the Ld.AO of Rs.3,60,96,000/- being the difference in the sale consideration received and the amount paid to the vendors of land Smt. Neena of Rs.96,000/- and Smt. Yasodha of Rs.3,60,00,000/- by acting as Power Agent.

8.2 The brief facts of the case is that the assessee in the capacity of Power of Attorney had sold the landed property belonging to Smt. Yasodha of 5 acres for sale consideration of

Rs.11,50,00,000/- and the landed property belonging to Smt. Neena of 3.48 acres for sale consideration of Rs.8,00,40,000/- on 5th October 2006. The assessee received the sale consideration on various dates during the month of October 2006, which was passed on to the owners of the land. Further Shri J. Balaji acting as power agent entered into a tripartite agreement with M/s. BDCL and M/s. Carmen Builders to forego the farming rights held by M/s. BDCL and the landlord, towards which M/s. Carmen Builders paid an amount of Rs.10,17,60,000/- to M/s. BDCL. Out of the above additional consideration M/s. BDCL passed on 60% of the amount to Shri J. Balaji, the assessee. The assessee explained before the Ld.AO that he had passed on the aforesaid consideration to the landowners. The Ld.AO directed the assessee to produce the evidence for having paid the compensation and the sale consideration received by him to the landlords. The assessee could not substantiate with evidence the amount of Rs.96,000/- and Rs.3,60,00,000/- paid to Smt. Neena and Smt. Yasodha respectively out of the aggregate amount received by him towards the sale of the landed property. Since the vendors of the property Smt. Neena and Smt. Yasodha had also not disclosed the aforesaid amount as their respective

income in the return of income and since there was no proof that they have received the aforesaid amount from the assessee, the Ld.AO opined that the amount was retained by the assessee and therefore added to his income. The Ld.CIT(A) agreeing with the view of the Ld.AO confirmed his order.

8.3 At the outset, we find that even before us at this stage the assessee is not able to establish with cogent evidence that he has paid the aforesaid amount received on behalf of the vendors of the property to the vendors. The vendors of the property has also not acknowledged the receipt of the amount of Rs.3,60,96,000/- from the assessee. In this situation, we do not find it necessary to disturb the finding of the Ld.Revenue Authorities on this issue. Accordingly we hereby confirm the order of the Ld.CIT(A) on this issue.

9 CO No.68 of 2014 of Shri J. Srinivasan, AY 2007-08 & ITA No.3467 of 2016 :-

In both the CO and the appeal of the assessee, the grievance of the assessee is that the Ld.CIT(A) has erred in

confirming the order of the Ld.AO for treating the amount of Rs.7.2 crores as the income of the assessee.

9.1 At the outset, we find that the CO filed by the assessee is barred by limitation by 671 days and the appeal filed by the assessee is barred by limitation by 1588 days. Further the assessee has not failed condonation petition in his appeal, though condonation petition was filed in his CO. On perusing the condonation petition, it is observed that the assessee had stated the delay had occurred due to the laxity of the assessee's AR, however there is no material to establish the claim of the assessee. Therefore we do not find any merit in the same. On the merits of the case also, we do not find any reason to hold otherwise than the decision rendered by the Ld. CIT(A) as elucidated herein below:-

9.2 The assessee had negotiated and sold the land belonging to Shri N. Murughasan acting as his Power of Attorney holder. In the process he received Rs.7.2 crores which was retained by him. Thus the assessee had made a profit/surplus of Rs.7.2 crores. Therefore the Ld.AO treated it as the income of the assessee

rejecting his claim that he only acted as an agent and hence it cannot be assessed in his hands. On appeal, the Ld.CIT(A) accepted the view of the Ld.AO and confirmed his order.

9.3 Before us the Ld.AR reiterated the arguments made before the Ld. Revenue Authorities stating that the assessee had only acted as power agent and therefore the entire amount realized from the sale of the land has to be assessed in the hands of the vendor and not in the hands of the assessee who is only the power agent of the vendor. On the other hand the Ld.DR argued in support of the Ld.Revenue Authorities.

9.4 We have heard the rival submissions and carefully perused the materials available on record. From the facts of the case, it is apparent that the assessee had negotiated the sale of the land and ultimately sold the land at a fabulous price. In the process, he retain Rs.7.2 crores out of the amount realized from the sale of the land and the same is not claimed by the vendor of the land. Hence, it is evident that the amount of Rs.7.2 crores retained by the assessee is his profit / surplus arising out of the transaction. Obviously this becomes the income of the assessee and

accordingly the Revenue had assessed the same in his hands. Therefore, we do not find any reason to interfere with the order of the Ld.Revenue Authorities on this issue. Accordingly both the CO & Appeal filed by the assessee is devoid of merits.

10 CO No.31 of 2015 of Shri N. Murughasan, AY 2007-08 & ITA No 3468 of 2016 :-

In both the CO & the appeal of the assessee, the lone issue raised is that the Revenue has completed the assessment U/s.143(3) of the Act on a dead person, which is erroneous and therefore the same has to be quashed.

10.1 At the outset, we find that both the CO & the appeal filed by the assessee are with delay of 717 days and 1582 days respectively and the assessee has not filed any condonation petition. Further the Ld.AR of the assessee also did not seriously argued the case of the assessee on this issue before us. Moreover, no material on record was produced before us to substantiate the claim. Therefore we do not have any alternative other than dismiss the CO & the appeal of the assessee. It is ordered accordingly.

11. In the result the Revenue appeals in ITA Nos.1196 of 2011, 1377 of 2012, 1378 of 2012 & 1379 of 2012 are partly allowed and ITA Nos.1198 of 2011, 1602 of 2012, 1720 of 2012, 699 of 2013, & 1380 of 2012 are dismissed. The Cross Objections in CO Nos.119 of 2011, 68 of 2014 & 31 of 2015 and appeals of the assesseees in ITA Nos. 3467 of 2016 & 3468 of 2016 are dismissed.

Order pronounced on the 13th November, 2017 at Chennai.

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 13th November, 2017

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
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| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |